

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF:

GERALD DIRKS

Respondent

Proceedings under Section 309(a) of the  
Clean Water Act, 33 U.S.C. § 1319(a)

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)  
) Docket No. CWA-07-2008-0050  
)  
)  
)

) FINDINGS OF VIOLATION/  
) ORDER FOR COMPLIANCE  
) ON CONSENT  
)  
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**I. FINDINGS OF VIOLATION**

Jurisdiction and Preliminary Statement

1. The following FINDINGS OF VIOLATION are made and ORDER FOR COMPLIANCE ON CONSENT ("Order on Consent") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), by Section 309(a) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(a), as delegated by the Administrator to the Regional Administrator, EPA Region VII, and further delegated to the Director, Water, Wetlands and Pesticides Division (WWPD), EPA Region VII.

2. The Respondent in this case is Mr. Gerald Dirks who resides at Route 4, Box 432, Butler, Missouri, 64730. Mr. Dirks (Respondent) owns property around a wetland and stream locally known as Lateral Ditch Number Three located in Section 3, Township 39 North, Range 32 West, Butler, Bates County, Missouri.

3. EPA and Respondent, having determined that settlement of this matter is in the best interest of all parties, come now and enter into this Order on Consent.

**II. ALLEGATIONS**

4. EPA has reason to believe that Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311, through discharge of fill material into waters of the United States. Specifically, Respondent discharged fill material into a wetland and stream locally known as Lateral Ditch Number Three. Respondent filled 2.9 acres of wetland adjacent to Lateral Ditch Number Three

and discharged approximately 200 feet of fill material into Lateral Ditch Number Three without obtaining the necessary permit required by Section 404 of the CWA, 33 U.S.C. § 1344.

5. Respondent is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

**Statutory and Regulatory Framework of Section 404**

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, by any person except in compliance with, inter alia, Section 404 of the CWA, 33 U.S.C. § 1344.

7. Section 404 of the CWA, 33 U.S.C. § 1344, provides that the discharge of dredged or fill material into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362, occur in accordance with a permit issued under that Section.

8. Section 404 of the CWA, 33 U.S.C. § 1344, provides that the Secretary of the Army, acting through the Chief of Engineers, may issue permits for the discharge of dredged or fill material into navigable waters at specified disposal sites, after notice and opportunity for public comment.

9. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

10. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, inter alia, dredged spoil, rock, sand and cellar dirt.

11. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “...the waters of the United States, including the territorial seas.”

12. 40 C.F.R. § 232.2 and 33 C.F.R. Part 328 define waters of the United States, in part, as, “...lakes, rivers and streams, ...wetlands.”

13. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” as “...any discernible, confined and discrete conveyance...from which pollutants are or may be discharged.”

14. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include an individual.

15. Section 404 of the CWA requires a person to obtain a permit (“Section 404 permit”) from the United States Army Corps of Engineers (“Corps”) prior to any discharge of dredged or fill material into the navigable waters of the United States.

### **Factual Background**

16. At all times relevant to this action, Respondent owned, operated or otherwise controlled approximately 2.9 acres of property located in Section 3, Township 39 North, Range 32 West, Butler, Bates County, Missouri. The property is located adjacent to Lateral Ditch Number Three and includes wetland areas.

17. On October 14, 2003, the Natural Resources Conservation Service (NRCS) entered into a Wetland Restoration Plan (WRP) with Respondent (Attachment 1). The WRP required regeneration of 51.4 acres of previously converted wooded wetlands. The wetland restoration project was located in Section 3, Township 39 North, Range 32 West, Butler, Bates County Missouri. The WRP has not been implemented.

18. Subsequent to entering into the WRP, Respondent and/or persons acting on his behalf, using earth-moving construction equipment, discharged dredged or fill material including dirt, spoil, rock and sand, into 200 feet of the channel of Lateral Ditch Number Three in order to divert flow. Respondent and/or persons acting on his behalf also discharged dredged or fill material into 2.9 acres of nearby wetlands in order to construct a levee.

19. The construction equipment used by Respondent or ones acting on his behalf, acted as a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

20. The dredged and/or fill materials discharged by Respondent into the wetlands and Lateral Ditch Number Three includes spoil, rock, sand and dirt and are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

21. Lateral Ditch Number Three is a navigable water within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and a water of the United States as defined by 40 C.F.R. § 232.2 and 33 U.S.C. § 328.3:

22. The 2.9 acres where fill and/or dredged material along Lateral Ditch Number Three was discharged and disposed of by the Respondent is characterized as "wetlands," as defined at 40 C.F.R. § 232.2.

23. Respondent did not obtain a Section 404 permit prior to conducting the activities described in Paragraph 18 herein.

### **Findings of Violation**

24. The facts stated in Paragraphs 16-23 above are herein incorporated.

25. Respondent, or persons acting on his behalf, discharged pollutants into a water of the United States by using construction equipment without obtaining a Section 404 permit.

26. Respondent's failure to obtain a Section 404 permit prior to conducting the activities described in Paragraph 18 above is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

### **III. ORDER FOR COMPLIANCE ON CONSENT**

#### **Specific Provisions**

Based on the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent CONSENTS and is hereby ORDERED as follows:

27. Respondent agrees to remove the fill material from Lateral Ditch Number Three to restore flow solely to the original channel of Lateral Ditch Number Three. The fill material shall be disposed in an upland location in a method that minimizes erosion during the removal. The work shall be fully completed within twelve (12) months of the Effective Date.

28. Respondent agrees to remove the fill material discharged and disposed of in the 2.9 acres of converted wetland adjacent to Lateral Ditch Number Three. The fill material shall be disposed of in an upland location in a method that minimizes erosion during the removal. The work shall be fully completed within 12 months of the Effective Date.

29. Respondent agrees to perform all of the requirements of the October 14, 2003, WRP and Project as set forth in Attachment 1. Attachment 1 is incorporated herein by reference. The WRP and Project shall be fully completed within 12 months of the Effective Date of this Order on Consent. The project is located at Section 3, Township 39 North, Range 32 West, Bates County, Missouri. Those actions include but are not limited to the following:

a. The converted wetland shall be restored using a combination of natural regeneration of desirable native herbaceous and woody plants from root sprouting and available seed sources for 16.9 acres, and tree planting for thirty-four and one half (34.5) acres in designated converted wetland fields. Designated converted wetland fields are depicted in Exhibit 6 of the WRP.

b. Bottomland hardwood forest shall be re-established on the thirty-four and one half (34.5) acres depicted in Exhibit 6 of the Wetland Restoration Tree Planting Plan at a rate of two hundred and fifty (250) bare root seedlings per acre.

c. Seedlings shall be planted in rows or groups on an approximate 12 foot by 15 foot grid.

d. The following tree species shall be planted in the quantity identified:

Scientific Name	Common Name	Quantity
1) carya illinoensis	pecan	2875
2) carya laciniosa	shell bark hickory	100
3) quercus macrocarpa	bur oak	500
4) quercus palustris	pin oak	2850
5) platanus occidentalis	sycamore	400
6) fraxinus Pennsylvania	green ash	500
7) acer saccharinum	silver maple	600
8) quercus bicolor	swamp white oak	500
9) ilex decidua	deciduous holly	100
10) corylus Americana	American hazel	200
TOTAL		8625

e. All planting shall be bare root seedlings, conservation grade or better.

f. Woody plants shall be vigorous, moist but free of mold, free of defects and with well-developed root systems. Plants that do not conform to this description after delivery to the site shall be discarded and shall be replaced by Respondent.

g. Woody material shall be planted according to the species listed above.

h. The seedlings shall be at least one (1) year old and at least 12 inches in height. A root/shoot ratio must be maintained at a range of one-to-one (1:1) to one-to-one and a half (1:1.5). The taproot may not be shortened to less than eight (8) inches in length. Seedlings shall be maintained in a dormant condition until planted.

i. Seedling shall be planted upright with no more than a twenty (20) percent lean and at the same depth as they grew in the nursery. Soil shall be packed firmly around the seedling roots to eliminate air pockets.

j. The site shall be prepared in the following manner: (1) the entire planting area shall be mowed; (2) stock shall be planted by hand or by use of a tractor-drawn tree planter; (3) all planting stock shall be planted between February 15 and May 15; (4) disking strips where plantings are planned will facilitate ease of planting, however no disking shall be done where natural regeneration is occurring.

k. All tree planting shall be inspected in September following planting.

l. At the end of three years, a minimum of one hundred twenty-five (125) stems per acre of desirable species must be present.

m. Desirable species include: *echinocloa* species (wild millet), *polygonum* species (smartweeds), *carex* species (sedges), *carya illinoensis* (pecan), *carya laciniosa* (shell bark hickory), *quercus macrocarpa* (bur oak), *quercus palustris* (pin oak), *fraxinus pennsylvanica* (green ash), *acer saccharinum* (silver maple), *quercus bicolor* (swamp white oak), *salix nigra* (black willow), *cephalanthus occidentalis* (button bush).

30. Within ninety (90) days of the Effective Date of this Order on Consent, Respondent shall submit a Mitigation Plan to EPA for review and approval. Mitigation will be defined to include restoration, rehabilitation (i.e. repairing a degraded aquatic resource) or re-establishment (i.e. returning natural resource functions to a former aquatic resource). All mitigation activities must be performed within the same water shed as Lateral Ditch Number Three. Respondent shall identify a location within that water shed and obtain permission from the property owner, if necessary, to perform those activities. The Mitigation Plan shall include restoration work for no more than 54.8 acres. The Mitigation Plan shall satisfy the following requirements and include, at a minimum, the following information:

a. The Mitigation Plan shall be prepared by a Professional Engineer (P.E.) or another appropriate professional with a background in hydrology and wetland restoration;

b. The Mitigation Plan shall describe methods to minimize erosion and stabilize disturbed areas at all sites;

c. The Mitigation Plan shall propose a schedule of no more than 12 months to accomplish the restoration activities described therein;

d. The Mitigation Plan shall identify the location of the wetland restoration activities by coordinates (preferably using DGPS), written location description (including block, lot, section/township/range, county), and Hydrologic Unit Code (HUC) number, as appropriate;

e. The Mitigation Plan shall propose the Work required to restore the converted wetlands to pre-discharge configuration. The Mitigation Plan shall identify the areas where restoration activities will be conducted and describe those restoration activities, including but not limited to specifying the type (i.e. herbaceous, shrub, tree), number, and species to be planted, standards set for determining success, and maintenance anticipated for achieving such success;

f. The Mitigation Plan shall be accompanied by a copy of the agreement or other document that memorializes the understandings and arrangements that have been established between the Respondent and the property owner(s) for the purpose of meeting the requirements under this Order on Consent, as required;

g. The Mitigation Plan shall include the provision of a perpetual conservation easement to be placed on all of the property subject to the Mitigation Plan;

h. The Mitigation Plan shall address plans for appropriate maintenance and a schedule for completing such maintenance (e.g. measures to control predation/grazing of mitigation plantings, replacement planting, structure maintenance/repair, etc.). Such maintenance planning also shall address invasive species control (plant and animal);

i. The Mitigation Plan shall identify clear, precise, quantifiable performance standards that can be used to evaluate the status of the restoration activities. These may include hydrological, vegetative, faunal and soil measures; and

j. The Mitigation Plan shall address the As-Built Report, Monitoring Plan to cover a period of no less than five years, and Adaptive Management Plan elements of the U.S. EPA, Region VII Compensatory Mitigation Plan Checklist for Addressing Enforcement related Mitigation (draft, November 15, 2005) and which are further specified under the associated Supplement (draft, November 15, 2005).

31. After review of the Mitigation Plan, EPA shall: (a) approve, in whole or in part, the Mitigation Plan; (b) approve the Mitigation Plan upon specified conditions; (c) modify the Mitigation Plan to cure the deficiencies; (d) disapprove, in whole or in part, the Mitigation Plan, directing Respondent to modify the Mitigation Plan; or (e) any combination of the above. However, the EPA shall not modify the Mitigation Plan without first providing the Respondent at least one written notice of deficiency and an opportunity to cure with fourteen (14) days. If EPA does not approve the Mitigation Plan, EPA will notify the Respondent in writing of the deficiencies, specifying a due date for submission of a revised Mitigation Plan. If EPA does not approve the revised Mitigation Plan, EPA will work informally with Respondent for thirty (30) days resolve the remaining deficiencies or issues. This thirty (30) day time period may be extended upon written agreement of the parties. If these informal efforts prove unsuccessful, EPA may modify the Mitigation Plan and will notify Respondent in writing of the modification and EPA's final decision that the informal efforts were not successful. If Respondent disagrees with any EPA decision, Respondent can invoke the Dispute Resolution process as described in Paragraph 38 of this Order on Consent. Compliance with the Mitigation Plan, as approved by EPA, shall be enforceable under the authority of this Order on Consent and the CWA.

32. Respondent agrees that it shall be in EPA's sole discretion to determine whether Respondent has fully implemented the Mitigation Plan and whether Respondent has adhered to the schedule contained therein. In making this determination, EPA will take into account Respondent's good-faith efforts as well as any factors beyond Respondent's control.

33. Respondent shall submit annual reports to EPA, beginning on the first anniversary of the Effective Date of this Order on Consent and continuing until EPA notifies Respondent in writing that the project is complete. The annual reports shall outline the status of the project and corrective actions, if any, that will be taken to maintain the original vegetation.

34. Respondent agrees to execute and file within 12 months of the Effective Date a perpetual environmental easement/deed restriction/covenant with the Register of Deeds for Bates

County, Missouri, for the property identified as the mitigation site in the Mitigation Plan, the 51.9 acres subject to the NRCS Mitigation Agreement, and the 2.9 acres adjacent to Lateral Ditch Number Three.

35. Respondent agrees to send EPA a file-stamped copy of the perpetual environmental easement/deed restriction/covenant within 10 days of receiving a final copy from Bates County, Missouri, Register of Deeds.

36. Respondent agrees that this Order on Consent shall not constitute a permit under the CWA. Compliance with the terms of this Order on Consent shall not relieve Respondent of his responsibility to obtain any required local, state, and/or federal permits. Specifically, Respondent agrees to consult with the Corps and agrees to obtain all permits that the Corps determines necessary before commencing any work required by this Order on Consent.

37. Respondent shall submit all reports and deliverables required by this Order on Consent to EPA and the Corps at the following addresses:

Mr. Raju Kakarlapudi, Enforcement Officer  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency – Region VII  
Kansas City, Kansas 66101

And

Mr. Mark Frazier, Reg. Program Manager/Assistant Branch Chief  
Kansas City District  
U.S. Army Corps of Engineers  
601 E. 12<sup>th</sup> Street  
Kansas City, Missouri 64106

### **Dispute Resolution**

38. Unless this Order on Consent expressly provides otherwise, the dispute resolution procedures of this Paragraph shall be the exclusive mechanism for resolving disputes arising under this Order on Consent. The Parties shall attempt to resolve any disagreement concerning this Order on Consent expeditiously and informally.

a. If Respondent objects to any EPA action taken pursuant to this Order on Consent he shall notify EPA in writing of his objection within fourteen (14) days of such action, unless the objection has been resolved informally. The notice shall set forth the specific points of the dispute, the position Respondent maintains should be adopted as consistent with the requirements of this Order on Consent, the factual and legal bases for Respondent's position and all matters Respondent considers necessary for EPA to make a determination.

b. EPA and Respondent shall have thirty (30) days from EPA's receipt of Respondent's written objection to resolve the dispute informally or through formal negotiations. This thirty (30) day negotiation period may be extended by agreement of the parties. Any agreement reached by the parties pursuant to this Paragraph shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Order on Consent.

c. If the parties are unable to reach an agreement, the dispute shall be presented to the Director of the WWPD ("Director") of EPA Region VII, for resolution. The Director will issue a written decision on the dispute to the Respondent. The Director's decision is EPA's final decision.

d. Respondent's participation in this dispute resolution process shall not constitute a waiver of its right to challenge or object to the decision in an action taken by EPA resulting from or based upon the decision made by EPA under these procedures other than one reached by mutual agreement of the parties.

e. If the pendency of a dispute as defined herein and its resolution cause a delay that prevents Respondent from meeting a deadline set forth in, or established pursuant to this Order on Consent, that deadline shall be extended as necessary; provided, however, that any such deadline shall not be extended if EPA finds that the dispute was not in good faith or otherwise lacks a reasonable basis on the part of the Respondent.

### **Force Majeure**

39. Respondent agrees to perform all requirements of this Order on Consent within the time limits established under this Order on Consent, unless the performance, including but not limited to gaining access to the site, is delayed by a *force majeure*.

a. For purposes of this Order on Consent, a *force majeure* is defined as any event arising from causes beyond the control of the Respondent, or of any entity controlled by the Respondent, including, but not limited to, his contractors and subcontractors, that delays or prevents performance of any obligation under this Order on Consent despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise best efforts to fulfill the obligation includes using best efforts to anticipate any potential *force majeure* event (1) as it is occurring; and (2) following the potential *force majeure* event, such that the delay is minimized to the greatest extent possible. Examples of *force majeure* include, but are not limited to, natural disasters (earthquakes, tornado, flood, hurricane, or fire); wars, riots and other upheavals; and performance failure of parties beyond the control of the Respondent. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

b. If any event occurs or has occurred that may delay the performance of any obligation under this Order on Consent, Respondent shall notify EPA within five (5) days after Respondent first knew that the event might cause a delay. Within fourteen (14) days of providing notice to EPA as described above, Respondent shall provide to EPA in writing: (1) an explanation and

description of the reasons for the delay; (2) the anticipated duration of the delay; (3) all actions taken or to be taken to prevent or minimize the delay; (4) a schedule for implementation of any measures to be taken to prevent or mitigation the delay or the effect of the delay; (5)

Respondent's rationale for attributing such delay to a *force majeure* event if he intends to assert such a claim. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

c. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Order on Consent that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

#### **General Provisions**

40. Respondent admits the jurisdictional allegations in this Order on Consent and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Order on Consent.

41. Respondent neither admits nor denies the factual allegations contained in this Order on Consent.

42. Compliance with the terms of this Order on Consent shall not relieve Respondent of liability for any violations of the CWA not addressed in this Order on Consent. In addition, nothing in this Order on Consent shall prohibit EPA from seeking additional injunctive relief pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

43. If any provision or authority of this Order on Consent, or the application of this Order on Consent to Respondent, is held by Federal judicial authority to be invalid, the application to Respondent of the remainder of this Order on Consent shall remain in force and effect and shall not be affected by such a holding.

#### **Effect of Compliance with the Terms of this Order on Consent**

44. This Order on Consent shall not constitute a permit under the CWA. Compliance with the terms of this Order on Consent shall not relieve Respondent of his responsibility to obtain any required local, state and/or federal permits. Specifically, Respondent shall consult

with the United States Army Corp of Engineers, and shall obtain all permits that the Corps determines are necessary to address the discharges and/or to implement the approved Mitigation Plan.

45. This Order on Consent does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 et seq., all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Sections 309 of the Act, 33 U.S.C. § 1319, for any violation cited in this Order on Consent. Issuance of this Order on Consent shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for any violation whatsoever.

#### **Access and Requests for Information**

46. Nothing in this Order on Consent shall limit EPA's right to obtain access to, and/or to inspect Property operated by Respondent and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

#### **Severability**

47. If any provision or authority of this Order on Consent, or the application of this Order on Consent to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order on Consent shall remain in full force and effect and shall not be affected by such a holding.

#### **Parties Bound**

48. This Order on Consent shall apply to and be binding upon the Respondent, his agents, successors and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for him with respect to matters included herein comply with the terms of this Order on Consent.

#### **Effective Date**

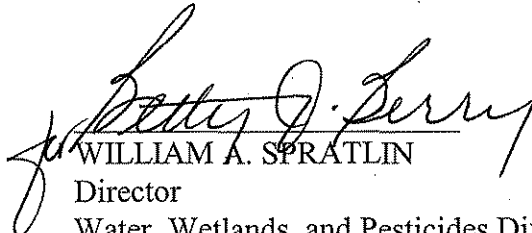
49. The terms of this Order on Consent shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order on Consent is signed by EPA.

#### **Termination**


50. This Order on Consent shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order on Consent have been met.

**FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:**

04/11/08  
Date

  
WILLIAM A. SPRATLIN  
Director  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency - Region VII

4/10/08  
Date

  
KELLEY CATLIN  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region VII

**FOR THE RESPONDENT:**

4-9-08  
Date



CERTIFICATE OF SERVICE

I certify that on the date noted below I mailed the foregoing Findings of Violation and Order for Compliance on Consent by certified mail, return receipt requested, to:

Mr. Gerald Dirks  
Route 4, Box 432  
Butler, Missouri 64730

4/15/08  
Date

Esther C. Ybetchett

## **ATTACHMENT 1**

## Wetland Restoration Plan Gerald Dirks - Bates County, Missouri

The following plan provides wetland restoration direction for converted wetlands on the following farm and tract in Bates County, Missouri, owned by Gerald Dirks: **Farm Number 4867, Tract #1226.**

- I. Project Overview: 51.4 acres of previously Converted wooded wetlands (CW) will be restored on site (See **Exhibit 1**). Eligibility for USDA benefits will begin at the time this wetland restoration plan agreement is signed by all parties. Restoration will be completed, (trees planted and natural regeneration starts) within 12 months of the signing of this agreement. After the agreement is signed, fields identified for wetland restoration will be shown on USDA Farm Services Agency maps as RW+ with the restoration date noted.
- II. Project Location: The project is located approximately ½ mile south of Nyhart, Missouri in Bates County, Missouri, Section 3, Township 39 North, Range 32 West. See **Exhibit 2**, (County map), **Exhibit 3**, (topography map), and **Exhibit 4**, (Aerial photo with converted wetlands identified by unit).
- III. The converted wetlands were located in the Marais Des Cygnes river bottoms. Most of the flow of the Marais Des Cygnes River has been diverted by the construction of the Bates County Ditch. Soils are poorly drained, nearly level flood plain soils formed by backwater flooding. Natural vegetation is bottomland hardwood forest and depressional herbaceous wetlands where too wet for trees to survive.
  - A. Cowardin Wetland Classifications prior to conversion: Palustrine – forested – deciduous - saturation hydrology (PFO1Bz), Palustrine – forested – deciduous - seasonally flooded or inundated (PFO1Cz), Palustrine – ss – deciduous - saturated hydrology (PSS1Bz), and Palustrine – emergent - seasonally flooded (PEM1Cz).
  - B. Soil type: Osage silty clay
  - C. Vegetation: Sites were previously forested with a mix of bottom land hardwood forest including: Quercus palustris – pin oak; Quercus macrocarpa – bur oak; Celtis occidentalis – common hackberry; Carya sp. – hickory sp.; Platanus occidentalis – American sycamore; Fraxinus pennsylvanica – green ash; and Ulmus Americana – American elm. (Determined by examination of the site prior to conversion.)
  - D. Hydrology on the converted sites historically was characterized by frequent, very brief to long duration flooding with shallow ponding in depressional areas and saturation after flood water recedes.

IV. Functional Assessment: Mo-Wet (Missouri Wetland Evaluation) completed. See **Exhibit 5**.

Part 2. Characterization of the Restored Wetland Sites.

- I. The wetland will be restored on site using a combination of natural regeneration of plants from root sprouting and available seed sources (16.9 acres), and tree planting (34.5 acres).
- II. Restoration Techniques - Hydrology is still intact so no hydrology restoration is required.

Natural regeneration of plants from root sprouting and available seed sources will be allowed to commence on 16.9 acres. Tree planting will be completed on 34.5 acres in the spring of 2004. Bare root seedlings will be used for planting stock at a rate of 250 seedlings per acre. See **Exhibit 6**.

Part 3. Monitoring

- I. Rationale: The site will be monitored for vegetative restoration success and wetland functions such as restored hydrology, sediment retention, stream velocity reduction and water storage.
- II. Parameters
  - A. Vegetation:
    1. A minimum of 125 stems per acre survival of any planted stock is required for three years to be considered successful.
    2. Natural regeneration of vegetation will be considered successful if 125 stems per acre of desirable species are present. (Desirable species include but are not limited to the species identified in the required planting list.)
  - B. Soils: Soils will continue to exhibit hydric indicators. Re-vegetation with trees and shrubs will reduce flow velocities, strain sediment, deposit woody debris, and moderate flood impacts
  - C. Hydrology: Hydrology will be provided by precipitation, run off from the adjacent watershed and natural flooding.
- III. Sampling Frequency:
  - A. Vegetation will be monitored annually for two full growing seasons after regeneration commences. On site monitoring will be performed to evaluate

wetland restoration status every three years after restoration by USDA personnel or their representatives. Annual offsite monitoring using aerial photos and slides will be maintained.

IV. Monitoring reports will be noted in case files for the farm on an annual basis by USDA personnel.

Note: Timber harvest is allowable on the wetland restoration site under an forest management plan provided by an Missouri Department of Conservation Forester or approved consulting forester and agreed to by the USDA NRCS and the landowner. Clear cutting will not be permitted.

## WETLAND RESTORATION AGREEMENT GOOD FAITH RESTORATION

I hereby agree to the terms set forth below and understand that any willful action on my part that is inconsistent with the stipulated terms that will diminish the functions and values of the wetlands will result in a loss of the Good Faith Exemption and the area will be considered converted wetland (CW+yr). I agree that the following terms must be installed and maintained in a condition that is to the satisfaction of Natural Resources Conservation Service and agree to provide the right of access to wetlands involved to USDA personnel or their representative to monitor to determine that the terms of the agreement are being carried out.

The Good Faith Restoration Agreement applies to Farm #4867, Tract 1226, Section 3, Township 39 North, Range 32 West in Bates County, Missouri as depicted on the attached aerial photocopy (See Exhibit 4).

### Wetland Restoration Terms:

The cooperator agrees to allow natural regeneration of desirable native herbaceous and woody plants on 16.9 acres, and plant trees of designated species on 34.5 acres in fields designated as CW as described in the Wetland Restoration Plan:

### Examples of desirable species

<u>ECHINOCLOA SP.</u>	WILD MILLET
<u>POLYGONUM SP.</u>	SMARTWEEDS
<u>CAREX SP.</u>	SEDGES
<u>CARYA ILLINOENSIS</u>	PECAN
<u>CARYA LACINIOSA</u>	SHELL BARK HICKORY
<u>QUERCUS MACROCARPA</u>	BUR OAK
<u>QUERCUS PALUSTRIS</u>	PIN OAK
<u>FRAXINUS PENNSYLVANICA</u>	GREEN ASH
<u>ACER SACCHARINUM</u>	SILVER MAPLE
<u>QUERCUS BICOLOR</u>	SWAMP WHITE OAK
<u>SALIX NIGRA</u>	BLACK WILLOW
<u>CEPHALANTHUS OCCIDENTALIS</u>	BUTTON BUSH

Natural regeneration from root sprouting and seed cast from available sources.

The Restored Wetland site, RW+, will be maintained in bottomland hardwoods. Timber management and harvest is allowable on the Restored Wetland, RW+ under the guidance of a forestry management plan approved by USDA Natural Resources Conservation Service and

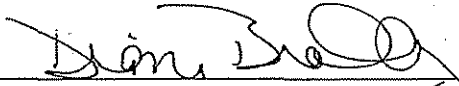
the landowner as long as the silvicultural practices do not damage the wetland functions that the wetland restoration is designed to fulfill.

As per this agreement, the restored wetland will regain the functions lost due to conversion. All requirements of the Good Faith Exemption are met with full compliance of this agreement.

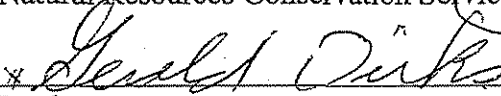
All conditions and requirements of this agreement must be implemented within 12 months of the effective date of this agreement. Failure to complete all requirements of this agreement within 12 months of the effective date will result in the loss of the exemption and the area will be re-labeled CW+yr and result in ineligibility for USDA Benefits.

This Good Faith Restoration applies to the 1985 Food Security Act as amended, only. Other Federal, state and local permits may be required. Prior to initiating your project, contact the Army Corps of Engineers, (COE), Department of Natural Resources, (DNR), and your local Soil and Water Conservation District for appropriate permits.

This agreement becomes effective when signed and dated by all parties identified below.

  
\_\_\_\_\_  
Natural Resources Conservation Service (NRCS)

10-17-03  
Date

  
\_\_\_\_\_  
\* Producer

10-14-03  
Date